



COLLIN COUNTY

Commissioners Court
2300 Bloomdale Road
Suite 4192
McKinney, Texas 75071
972-548-4631

June 22, 2015

The Honorable _____
Mayor, City of _____
[address]

RE: Your letter of June 15, 2015 regarding permitting authority of municipalities in municipal extraterritorial jurisdiction

Mayor _____:

We acknowledge receipt of your letter of June 15, 2015 in which you and the other Mayors of cities of Collin County raise concerns about the County's position in relation to issuance of municipal building permits within the extraterritorial jurisdiction of a city.

We make the following observations so that you can understand the County's position on these matters:

1. The County has previously entered into interlocal agreements pursuant to chapter 242 of the Texas Local Government Code so as to allow the cities of Collin County to enforce their subdivision platting regulations for new developments within the ETJ. This is consistent with the letter and spirit of chapter 242. However, chapter 242 does not expressly grant to a municipality the authority to include regulation of vertical construction in the chapter 242 interlocal agreements. As a whole, the chapter speaks to subdivision platting.
2. The County takes no position on the issue of a municipality unilaterally choosing to extend its building codes into the ETJ. That is the decision of the governing body of each municipality, based on guidance it receives from its city attorney. The county articulated this position to the City of McKinney in connection with its recent negotiations with the County to amend its chapter 242 interlocal agreement with the County. The Commissioners Court has legal concerns about the City's authority to enforce its building code and construction-related ordinances on vertical construction in the ETJ, and for this reason, the County chose not to amend its chapter 242 agreement for such purposes pending the County's efforts to seek legal clarification from the Attorney General. At the same time, the County expressed to the City that it would not take any legal action to prohibit McKinney or any other city of Collin County from seeking to impose its building code and construction-related ordinances in the ETJ if those cities believed they possessed the requisite legal authority to do so.

3. The Fort Worth Court of Appeals recently ruled that general law municipalities do not possess the requisite authority to enforce their building code ordinances in their ETJ. The case is styled, *Bizios v. Town of Lakewood Village*, 453 S.W.3d 598 (Tex. App – Fort Worth 2014) (issued December 31, 2014). The Court did not reach the issue as to the authority of home-rule municipalities to enforce their building code and construction-related regulations in their ETJ; however, this precise issue has now arisen in a lawsuit filed by a developer of an RV park against the City of McKinney.
4. Had the County agreed with the City of McKinney on amendments to its chapter 242 interlocal agreement so as to allow McKinney to enforce its building code and construction-related ordinances in the City's ETJ, there is little doubt the County today would be a defendant in the developer lawsuit against McKinney, which would have meant the County would be incurring significant expenditures of local tax dollars in legal fees.
5. The same law firm that sued the Town of Lakewood Village and won at the Fort Worth Court of Appeals in the *Bizios* case is now representing the RV park owner in the lawsuit against McKinney. That law firm takes the position that a home-rule city is without an express grant of authority from the Texas Legislature to impose its building code ordinances and other construction-related ordinances in its ETJ. The RV park owner is seeking injunctive relief and also a recovery of its damages and its attorneys' fees from McKinney.
6. The County, believing that the law on such matters is unclear, decided to seek an opinion from Attorney General Paxton as to: a) whether home-rule municipalities have authority to extend and enforce their building code and construction-related ordinances to vertical construction taking place in their ETJ; and b) whether such matters are proper for inclusion in County-City chapter 242 subdivision platting interlocal agreements. The County sought and received feedback from the McKinney City Attorney in drafting the Attorney General Opinion request and incorporated the City Attorney's suggested revisions in the final draft of the Opinion request.
7. Subsequent to the submission of the Attorney General Opinion request, various interested parties have submitted legal briefs to the Attorney General's office on the issues raised in the request. Importantly, the Texas Association of Builders ("TAB") submitted a legal brief stating that home-rule cities do not have statutory authority from the Legislature to impose building code and construction-related ordinances in their ETJ. I have enclosed a copy of TAB's letter brief to Attorney General Paxton so that you may review it and discuss it with your city attorney. At a minimum, TAB's position reflects that the County's reluctance to amend its chapter 242 platting agreement with McKinney was not frivolous – as current Texas law is vague on whether home-rule cities possess such authority.
8. TAB's brief to the Attorney General's office raises important policy arguments against extending a municipality's construction codes to the ETJ – namely the fact that residents of the ETJ have no voice in city matters, nor the ability to vote in city elections. Nor do persons residing in the ETJ receive municipal services absent the existence of a development agreement. While it is clear that municipalities have the right to reasonably regulate activities inside the city, there is a policy argument that persons residing outside the city should not be burdened by such regulations. Principles of private property rights are more than implicated in such discussions. The County Commissioners took such matters into consideration prior to

deciding to seek an Attorney General's Opinion for clarification on the law as to a city's regulatory powers in the ETJ.

9. It is my understanding that TAB funded a developer lawsuit against the City of Helotes (a general law municipality) for seeking to enforce its building code and construction regulations in its ETJ. I have been told the trial court has recently granted summary judgment in the developer's favor in that suit. If true, the Court's decision is in harmony with the Fort Worth Court of Appeals ruling in the *Bizios* case, and creates valid legal issues for general law cities of Collin County who seek to impose their regulations in their ETJ.

The County will continue to exercise only those rights and powers granted to it by the applicable laws of the State of Texas.

The County's actions regarding this matter are founded upon legitimate legal concerns as to the statutory powers and authorities of municipalities for activities occurring outside their corporate limits. There has been no change in County policy in the last six months, or for that matter in the last ten years, as no city of Collin County has ever issued a permit in the ETJ on a commercial property.

We know that private property rights are important to each of us, and to all Texans.

Sincerely,

Keith Self, County Judge

Susan Fletcher, Commissioner, Pct. 1

Cheryl Williams, Commissioner, Pct. 2

Chris Hill, Commissioner, Pct. 3

Duncan Webb, Commissioner, Pct. 4

Enclosure – Texas Association of Builders' letter brief to the Attorney General, June 1, 2015